UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION

JTH TAX, INC. d/b/a LIBERTY TAX SERVICE,

Plaintiff,

Civil No. 2:07cv169

JEROME REED,

Defendant.

Declaration of Bonnie Via

Pursuant to 28 U.S.C. § 1746, I, Bonnie Via, submit this declaration in support of JTH Tax, Inc.'s ("Liberty") claim against Jerome Reed ("Reed"). I declare under penalty of perjury that the following statements are true and correct:

1. I am over the age of eighteen (18) years and am fully competent to testify to the matter stated in this declaration. This declaration is based upon my personal knowledge, Liberty's corporate and business records, and information available form Liberty's employees and agents.

2. I am an assistant to the Regional Director for Liberty who supports franchisees in New Jersey and have held this or a similar position since April 2005. My duties include assisting in the support of franchisees in this territory.

3. In January 2004, Reed commenced operation of a Liberty Tax office in the territory identified by Liberty as NJ163. This office was located at 6 Market Street, Clifton, New Jersey 07012.

Dockets.Justia.com

4. Throughout Reed's time as a Liberty franchisee, Reed refused to be guided by his Franchise Agreement and the marketing and operational advice of Liberty in order to be successful. For example, Reed—

*Failed to maintain office hours during the off season in violation of Section 6.e. of his franchise agreement. *Id.* Attached hereto as Exhibit 1 is a true and correct copy of the Notice to Cure sent to Reed on April 29, 2005.

*Failed to apply for an EFIN in time to ensure that he would be able to obtain an EFIN from the IRS by January 8th, 2005 in violation of Section 8(b)(ix) of the franchise agreement. Attached hereto as Exhibit 2 is a true and correct copy of an e-mail to Reed explaining that because he applied to get an EFIN so late, he may be unable to obtain an EFIN in time for the commencement of tax season.

*Failed to have a telephone number and or answering machine via which customers could reach his office in violation of 6.h. of his franchise agreement. Attached hereto as Exhibit 3 is a true and correct copy of the Notice to Cure sent to Reed on April 29, 2005.

*Failed to submit a Gross Receipts Report in violation of Section 7.a. of his franchise agreement. Attached hereto as Exhibit 4 is a true and correct copy of the Notice to Cure sent to Reed on May 11, 2005.

*Failed to submit a Budget and Profit and Loss statement in violation of Section 7.b. of the franchise agreement. Attached hereto as Exhibit 5 is a true and correct copy of the Notice to Cure sent to Reed on June 14, 2005.

*Failed to post the correct business hours and location where clients could reach him in off season.

*Failed to have a computer system necessary to adequately service customers in violation of section 6.i. of the franchise agreement.

*Failed to listen to conference calls which help to ensure a franchisee's successful operation of a Liberty office.

*Failed to utilize Liberty's marketing plan and use roadside wavers although this is Liberty's proven effective marketing technique.

*Abandoned his Liberty office in violation of Section 6.e. of his franchise agreement.

5. On or about April 4, 2006, Liberty sent a Notice to Cure to Reed informing him that he was in violation of his Franchise Agreements in that he owed to Liberty monies which were more than 30 days past due. Attached hereto as Exhibit 6 is a true and correct copy of this Notice to Cure.

6. Reed failed to cure this deficiency.

7. On or about June 27, 2006, Liberty sent a letter to Reed informing him that his franchise agreement was terminated based upon his failure to pay amounts owing to Liberty. Attached hereto as Exhibit 7 is a true and correct copy of this Notice to Cure.

8. The letter of termination sent to Reed reiterates the post termination obligations contained in Reed's franchise agreement and states, in part, that Reed must immediately pay all amounts owing to Liberty.

9. Reed has not complied with his post termination obligations in that he has not paid all amounts owed to Liberty.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of April 2007.

Bonnie Via

Bonnie Via